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DEPARTMENT OF INSURANCE

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TO: Authorized Insurers, Insurance Producers, Insurance Trade Associations and Other Interested Parties

FROM: Charles R. Cohen
Director of Insurance

DATE: September 26, 2001

RE: **Implementation of New Insurance Producer Licensing Laws (Senate Bill 1366)**

This Bulletin supplements information provided in Bulletin 2001-03 as it relates to the enactment this year of new insurance producer licensing laws in Arizona by Senate Bill 1366, and describes some of the notable changes that will take effect on October 1, 2001. Unless otherwise noted, statutes cited in this Bulletin are as prescribed in Senate Bill 1366. A more detailed and comprehensive list of changes is available from the Insurance Licensing Section web page (www.state.az.us/id/licensing).

Neither this Bulletin nor the Insurance Licensing Section web page is intended to serve as an exhaustive list of changes. License applicants are strongly encouraged to carefully read license application instructions before submitting license application materials.

Exceptions to Licensing Requirements

Generally speaking, a person must be licensed as an insurance producer to “sell, solicit or negotiate insurance.” A.R.S. § 20-282. All those terms are statutorily defined. A.R.S. § 20-281. A.R.S. §20-283 lists persons who are exempt from licensure. Notably, the law allows an unlicensed officer, director or employee of an insurer who does not receive a commission to respond to requests from existing policyholders on matters arising out of their existing policies as long as the response is limited to conferring with the policyholders regarding the policyholders' requests¹. The law provides additional circumstances in which an officer, director or employee who is not paid a commission may engage in insurance-related activities without a license. The licensing exceptions are stated with precision, and therefore will not be paraphrased

¹ A.R.S. § 20-283(B)(1)(c)(ii)

here. I encourage insurance professionals engaged in activities related to sale, solicitation or negotiation of insurance products to review them carefully.

Lines of License Authority

The new law allows the Department to offer property insurance producer and casualty insurance producer as separate lines of authority. The Department will also offer personal-lines-producer and credit-producer lines of authority as prescribed by A.R.S. § 20-286.

The following changes to insurance producer license authority automatically take effect on October 1, 2001:

- Life agent is deemed **life insurance producer**;
- Disability agent is deemed **accident and health or sickness insurance producer**;
- Variable contracts agent is deemed **variable life insurance and variable annuities producer**;
- Property and casualty agent is deemed **property insurance producer** and **casualty insurance producer**.
- Broker is deemed **property insurance producer** and **casualty insurance producer**.

The Department will not be replacing existing license certificates to reflect the changes to license authority.

In addition to the lines of authority expressly provided under Arizona law, A.R.S. § 20-287(C)(2) requires the Department to offer to a non-resident insurance producer, subject to qualification for a non-resident license, limited-lines authority with the same scope of authority granted to the non-resident by the home state. Space is provided on Arizona's license application forms (L-169 for individuals and L-176 for business entities) to enable a non-resident applicant to write in desired limited lines of authority.

Nonresident Insurance Producer Licensing; Reciprocity

For purposes of insurance producer licensing, a "resident" is defined by A.R.S. § 20-281(13) as being a person whose "home state" is Arizona and who does not hold a resident license in another state. A "nonresident" is "...a person whose home state is not Arizona." A.R.S. § 20-281(11). "Home state" is the U.S. state or territory in which an insurance producer maintains a principal place of residence or principal place of business (or, for a business entity licensee, only a principal place of business) where the person "...is licensed to act as a resident insurance producer." A.R.S. § 20-281(4).

As these definitions reflect, a person can hold a resident license in only one state. In certain circumstances, a state other than Arizona in which an applicant is located cannot issue a license to a class of persons or for a type of activity for which a license is required in Arizona. In those instances, the person effectively has no "home state" and the person is generally required to apply as if the person were a resident of Arizona.

A.R.S. § 20-287 specifies the criteria and process for licensing nonresident insurance producers. Unless the application is denied pursuant to A.R.S. § 20-295, a nonresident insurance producer applicant shall be issued a license if all the following apply:

1. The person is currently licensed as a resident and in good standing in the person's home state;
2. The person has submitted the proper request for licensure and has paid the required fees;
3. The person has made application using Arizona's application form, the NAIC Uniform Nonresident Application form, or the application form used to obtain a license in the person's home state;
4. The person's home state issues nonresident insurance producer licenses to residents of Arizona on the same basis.

A.R.S. § 20-300 requires the Department to waive all requirements except for those listed in A.R.S. § 20-287 for non-resident applicants whose home state issues non-resident licenses to Arizona residents on the same basis. A.R.S. § 20-300 also provides that a non-resident who satisfies home state continuing education (CE) requirements is deemed to satisfy Arizona's CE requirements if the non-resident's home state treats Arizona residents in the same manner.

As a practical matter, it would be difficult to administer alternative requirements based on whether an applicant is a resident of a state that issues licenses on the same basis. Therefore, the Department will be applying the same requirements to all nonresident applicants, except that a business entity applicant from a state that does not issue insurance licenses to business entities will be subject to the same requirements as an Arizona-resident business entity applicant.

Additional Business Entity Requirements

Senate Bill 1366 replaces licensure of "firms or corporations" as insurance agents and brokers with licensure of "business entities" as insurance producers². A business entity can be either a resident or a non-resident.

Business entity applicants must specify a "designated producer" who must be an Arizona-licensed insurance producer. The "designated producer" is responsible for the business entity's compliance with Arizona insurance laws.³

Nonresident business entity applications will be evaluated in a manner similar to nonresident individual applications. Unless the application is denied for a cause enumerated in A.R.S. § 20-295 relating to the entity or its designated producer, members, officers, directors or managers, a nonresident insurance producer applicant

² A.R.S. § 20-281(1) defines "business entity" as "...any corporation, association, partnership, limited liability company, limited liability partnership or other legal entity except an individual or sole proprietorship."

³ A.R.S. § 20-285(D)(3).

shall be issued a license if the business entity is licensed in good standing in the home state, has submitted the request for licensure with required fees, has submitted one of the three permissible types of license applications⁴ and the applicant's home state licenses Arizona business entities on the same basis. Business entity producers organized in states that do not license business entities must generally meet the qualifications for an Arizona resident license.

Effective October 1, 2001, a licensed business entity must inform the Department within 30 days of any changes in the entity's members, directors, officers or designated producer. A business entity from Arizona or from a state that does not issue insurance producer licenses to business entities must, for each new member, director, or officer, provide a fingerprint card accompanied by the FBI processing fee.⁵

Business entities organized in Arizona or in states that do not license business entities must continue to provide evidence with the license application that the business has been formally established through the appropriate government agency⁶. A business entity that provides a letter of certification from its home state is still required to obtain authority from the Corporation Commission⁷ or Secretary of State⁸ to operate a business in Arizona. However, the business entity is no longer required to furnish evidence of the registration as a qualification for an insurance license.

Insurer Appointments and Terminations

- Senate Bill 1366 repealed the provisions in A.R.S. § 20-297 that required insurers to file with the Department by January 30 of each year a list of Arizona-licensed agents that represent the insurer.
- Applicants no longer are required to report their insurance company affiliations on license application or renewal forms.
- Arizona law still does not require insurance producer appointments and terminations to be reported to the Department.

Pre-license Examinations

Pre-license examinations for personal lines insurance producer authority and credit insurance producer authority will be available beginning October 1, 2001. To facilitate study for examinations, Experior Assessments, Arizona's pre-license examination vendor, offers the "Insurance Licensing Bulletin." The Experior bulletin provides examination content outlines, instructions for scheduling and paying for an examination, and the application form for an individual insurance license.

⁴ Arizona's application (Form L-176) or the NAIC Uniform Non-resident Application for Business Entities or the application form used to obtain a license in the home state.

⁵ A.R.S. § 20-286(C)(2)

⁶ Corporations and limited liability companies must file articles of incorporation/organization with the Corporation Commission, partnerships must file partnership agreements with a county recorder, limited partnerships must register with the Secretary of State. Details are provided in the instructions to Form L-176, "Application for a License for a Business Entity."

⁷ For corporations and limited liability companies.

⁸ For limited partnerships.

A person who relocates to Arizona from another state is not required to pass a pre-license examination if, within 90 days of the cancellation of the applicant's previous license, the Department receives a license application along with a certification from the former state that the person was licensed in good standing at the time the licensee relocated to Arizona.⁹

New Application Forms

The Department has developed new application forms, which are available on the Insurance Licensing Section web site (www.state.az.us/id/licensing) and at our Phoenix and Tucson offices, and which are published in the "Insurance Licensing Bulletin" distributed by Experior Assessments (www.experioronline.com, or 1-800-853-5448). The Department will accept the previous version of application forms for applications received through October 31, 2001. Only the new application forms will be accepted on or after November 1, 2001.

Nonresidents may submit Arizona's license form (Form L-169 for individuals or Form L-176 for business entities), may continue to submit the NAIC Uniform Application (available from www.licenseregistry.com), or may submit the application form that the person completed to become licensed in the home state. Applicants are encouraged to use Arizona's application form or the NAIC Uniform Application form to facilitate timely application processing.

Bond Requirements

The surety bond requirements of brokers, surplus lines brokers and Mexican insurance surplus lines brokers are repealed effective October 1, 2001. Bail bond agents and managing general agents must still maintain a surety bond throughout the term of the license.

Fingerprinting Requirements

- Senate Bill 1366 provides a definition for "home state" as it relates to business entities. A business entity organized in Arizona or in a state that does not license business entities is required to provide a fingerprint card and an FBI fingerprint processing fee for the designated producer and each member, officer, director and manager¹⁰ of the applicant.

⁹ A.R.S. § 20-288(A)(2).

¹⁰ "Principals" include all owners with a 10% or greater share of voting rights excluding ownership in publicly traded securities; directors and officers if a corporation; partners if a partnership; members and managers if a limited liability company; trustees if a trust; and owners, stockholders and employees if for a bail bond agent license.

Changes of Address and State of Residence

A licensee must report any change in business address, mailing address or address of residence to the Department within 30 days of the change. Licensees are encouraged to report any other changes (telephone number, fax number, e-mail address), which would enable the Department to contact the licensee with any license-related questions.

A licensee who relocates from Arizona to a state outside Arizona, or who relocates from one state outside Arizona to another state outside Arizona must report to the Department the change of address within 30 days of the relocation¹¹ and must provide a letter of certification of good standing from the insurance department in the new resident state within 30 days after receiving the new resident license¹².

A non-resident licensee who relocates to Arizona must submit a license application to become a resident licensee within 90 days after relocating to Arizona¹³. If a person timely submits an application and meets all the requirements to become a resident licensee, the person may continue to act under the non-resident license until the Department renders a decision on the license application. If the person fails to timely apply to become a resident licensee, the person's non-resident license shall expire on the 90th day after the person relocates to Arizona.

Commissions

Like the law it replaces, A.R.S. § 20-298, effective October 1, 2001, generally prohibits the payment of commissions to unlicensed persons for the sale, solicitation or negotiation of insurance. The new statute does allow payment or assignment of commissions to persons who do not sell, solicit or negotiate insurance except when such payment would violate Arizona's anti-rebating laws¹⁴. An example of permissible commission sharing would be if an insurance producer rents office space from an unlicensed entity for which rent is based on commissions received (as long as the unlicensed entity does not sell, solicit or negotiate). Insurance producers are encouraged to broadly interpret the definitions of "sell," "solicit," and "negotiate" provided in A.R.S. § 20-281 before sharing commissions with a person that does not hold an Arizona insurance producer license.

Record Keeping

All insurance producers (resident and nonresident) must keep at their principal place of business the usual and customary records that pertain to a transaction under the insurance producer's license for at least three years following the date the transaction was completed.¹⁵

¹¹ A.R.S. § 20-286(C)

¹² A.R.S. § 20-287(B)

¹³ A.R.S. § 20-285(G)

¹⁴ A.R.S. §§ 20-449 and 20-451

¹⁵ A.R.S. § 20-290(A)

Standards for Denying, Suspending, Revoking or Refusing to Renew a License Effective October 1, 2001:

- The statutory grounds for the Director to deny, revoke or refuse to renew a license have been changed (A.R.S. § 20-295). The Director may consider these grounds as they apply to an individual, or a business entity and its designated producer, members, officers, directors, and managers. Application forms have been updated to reflect the following changes:
 - A.R.S. § 20-295(A)(6) enables the Director to consider any felony conviction (instead of only felonies involving moral turpitude).
 - A.R.S. § 20-295(A)(10) specifically prohibits forging another person's name on any document relating to an insurance transaction.
 - A.R.S. § 20-295(B)(2) subjects a business entity to disciplinary action based upon unlawful activities of its individual producers if the activities were or should have been known to the designated producer or a member, officer, director or manager of the entity, if the activities were not seasonably reported and if no reasonable corrective action was taken.
- Insurance producers are required by A.R.S. § 20-301(A) to report to the Department, within 30 days after the final disposition of the matter, any administrative action taken against the producer in another jurisdiction or by another governmental agency in Arizona.
- Insurance producers are required by A.R.S. § 20-301(B) to report to the Department, within 30 days after the initial pre-hearing date, any criminal prosecution against the producer in any jurisdiction.

If one or more of the statutory grounds set forth in A.R.S. §20-295 is applicable to a license applicant or if a licensee has a matter that requires disclosure under the provisions of A.R.S. § 20-301(A) or (B), the person must provide :

- a SIGNED statement detailing all incidents including (1) names of all parties involved, (2) dates and locations, (3) the names and localities of any courts and/or administrative agencies involved, (4) the disposition of each matter, (5) whether the conviction, plea or finding was for a felony, misdemeanor or open-ended charge;
AND
- certified copies of any and all indictments, complaints, plea agreements, orders of conviction, notices of hearing or trial, sentencing orders, suspension/revocation orders and any other information that relates to each matter. If certified copies are not available, the person must provide a letter from the clerk of the pertinent court or the official involved stating the records are not available and the reason.

Persons with questions concerning Senate Bill 1366 are encouraged to consult the Insurance Licensing Section web page (www.state.az.us/id/licensing), or to call the Insurance Licensing Hotline (602.912.8470, or 1.877.660.0964 if calling long distance within Arizona).